

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 11250 of 2020

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PASHURAM POTTERY WORKS CO. LTD.

Versus

PARMAR DAMJIBHAI HIRABHAI

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Appearance:

MR.VARUN K.PATEL(3802) for the Petitioner(s) No. 1

MR RAJESH P MANKAD(2637) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE A.G.URAIZEE

Date : 17/03/2021

ORAL ORDER

Heard Mr. Varun K. Patel, learned advocate for the petitioner and Mr. Rajesh P. Mankad, learned advocate for the respondent.

Mr. Patel, learned advocate for the petitioner submits that under Section 33 of the Payment of Gratuity Act, disputed question of facts cannot be considered. It is his further submission that Controlling Authority has considered documents which were not duly proved. He would further submit that the petitioner company is ordered to be wound up in the year 1998 under order of this Court. He submits that there is no cogent evidence on record that the respondent workman had, in fact worked till 2005 in the administrative office of the petitioner. He, therefore, submits

that present petition requires consideration.

On the other hand Mr. Rajesh P. Mankad, learned advocate for the respondent urges that the impugned order is money decree.

It is his further submission that the Controlling Authority has given cogent reason for directing the petitioner to pay the gratuity, on the basis of the documentary evidence adduced by the parties. He therefore, submits that the petition does not require consideration. However, he submits that in case if this Court is inclined to admit the petition, relying upon the decision of the Hon'ble Supreme Court in case of M/s Mehta Teja Singh and Company vs. Grindlays Bank Limited reported in 1982(3) SCC 199, he urges that the petitioner may be directed to deposit the amount of gratuity and periodical interest may be allowed to be received by the respondent.

Considering the rival submission, I am of the view that arguable issue is involved in the petition and it *prima facie* appears that the Controlling Authority has relied upon certain documentary evidence which was not proved in accordance with the provisions of the Evidence Act. It

further appears to be the undisputed fact that the petitioner company is wound-up in the year 1998 under order of this Court.

Considering the overall facts of the case, I am of the view that this is not appropriate case to direct the petitioner to deposit the amount of gratuity as urged by Mr. Rajesh P. Mankad, learned advocate for the respondent.

In view of above, **RULE**. Mr. Mankad, learned advocate waives service of rule for the respondent.

SURESH SOLANKI

(A.G.URAIZEE, J)